

1  
2  
3  
4  
5  
6  
7 **UNITED STATES DISTRICT COURT**  
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 CITIBANK, N.A.,

10 Plaintiff,

11 CASE NO. 12-CV-2194 - IEG

12 vs.

13 SEPEHR TORABI et al.,

14 Defendants.

15 **ORDER:**

16 **1. GRANTING PLAINTIFF'S  
MOTION TO REMAND;**

17 [Doc. No. 2]

18 **2. DENYING PLAINTIFF'S *EX  
PARTE* MOTION TO  
SHORTEN TIME AS MOOT**

19 [Doc. No. 3]

20 On July 6, 2012, Plaintiff Citibank, N.A., filed this action in San Diego County Superior  
21 Court, alleging a single state law claim of unlawful detainer for damages not to exceed \$10,000.  
22 [See Doc. No. 1, Ex. 1.] On September 10, 2012, Defendant Sepehr Torabi removed to this Court,  
23 invoking federal question jurisdiction on the basis that Plaintiff's actions violated Defendants'  
24 rights under the Fifth and Fourteenth Amendments. [Doc. No. 1.] On September 17, 2012,  
25 Plaintiff filed a motion to remand, [Doc. No. 2], and an *ex parte* motion to shorten time on the  
motion to remand, [Doc. No. 3]. For the reasons below, the Court finds that it lacks subject matter  
jurisdiction and thus **GRANTS** Plaintiff's motion to remand and **DENIES** Plaintiff's *ex parte*  
motion to shorten time as moot.

26 **DISCUSSION**

27 "A civil case commenced in state court may, as a general matter, be removed by the  
28 defendant to federal district court, if the case could have been brought there originally." *Martin v.*

1 *Franklin Capital Corp.*, 546 U.S. 132, 134 (2005) (citing 28 U.S.C. § 1441). But “[i]f at any time  
 2 before final judgment it appears that the district court lacks subject matter jurisdiction, the case  
 3 shall be remanded.” 28 U.S.C. § 1447(c). Where, as here, removal is predicated on 28 U.S.C. §  
 4 1331, *i.e.*, federal question jurisdiction, “a defendant may not remove a case to federal court unless  
 5 the plaintiff’s complaint establishes that the case ‘arises under’ federal law.” *Franchise Tax Bd. of*  
 6 *State of Cal. v. Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1, 10  
 7 (1983). To “arise under” federal law, “a right or immunity created by the Constitution or laws of  
 8 the United States must be an element, and an essential one, of the plaintiff’s cause of action.” *Id.*  
 9 at 11.

10 Here, Plaintiff’s complaint asserts a single state law claim for unlawful detainer, of which  
 11 no right or immunity under the Constitution or federal law is an essential element. [See Doc. No.  
 12 1, Ex. 1.] And under well-settled doctrine, Defendant’s responsive invocation of constitutional or  
 13 otherwise federal issues is beside the point. *See Franchise Tax Bd.*, 463 U.S. at 11 (explaining  
 14 that, under the “well-pleaded complaint” rule, the complaint, rather than potential or even  
 15 necessary defenses or counterclaims, determines federal question jurisdiction). Thus, as no federal  
 16 question is essential to Plaintiff’s claims, no federal question jurisdiction exists. *Id.* Accordingly,  
 17 the Court lacks subject matter jurisdiction and this case must be remanded. 28 U.S.C. § 1447(c).

18 **CONCLUSION**

19 For the foregoing reasons the Court hereby **REMANDS** this action to state court and  
 20 **DENIES** Plaintiff’s motion to shorten time as moot.

21 **IT IS SO ORDERED.**

22 **DATED:** September 24, 2012

  
 23 IRMA E. GONZALEZ  
 24 United States District Judge

25  
 26  
 27  
 28